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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 13th March 2007

No. 2352 — II/1(SS) - 31/03 (Pt.) - L. E. — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th January 2007 in I.D. Case No. 48 of 2003 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the management of O. F. D. C. Ltd., Jharsuguda (C) Division represented by the Divisional Manager, O. F. D. C. Ltd., Jharsuguda (C) Division, Jharsuguda/ Subdivisional Manager, O. F. D. C. Ltd., Sundargarh (C) Division, Sundargarh and their workman Shri Rajkishore Panda, C/o Anam Mishra at Kapileswar Dandasahi, Post Office Old Town, Bhubaneswar was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 48 OF 2003

Dated the 24th January 2007

Present :

Shri P. K. Mahapatro, LL. B.,
Presiding Officer,
Labour Court, Sambalpur.

Between :

The Management of O. F. D. C. Ltd., .. First Party—Managements
Jharsuguda (C) Division
represented by :

1. The Divisional Manager,
Orissa Forest Development Corporation Ltd.,
Jharsuguda (C) Division, Jharsuguda.
2. The Subdivisional Manager,
O.F.D.C. Ltd., Sundargarh(C) Division,
Sundargarh.

And

Their Workman .. Second Party—Workman
Shri Rajkishore Panda,
C/o Anam Mishra,
At Kapileswar Dandasahi,
P. O. Old Town, Bhubaneswar.

Appearances :

For the First Party — Management	..	Shri B. R. Nayak, L. D. Asst., O.F.D.C., Jharsuguda.
For the Second Party— Workman	..	Self

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 and 12 of the Industrial Disputes Act, 1947 for adjudication of disputes vide memo No. 8952 (6), dated the 9th September 2003 scheduled below :—

"Whether the refusal of employment to Shri Rajkishore Panda, ex-Peon by the management of Orissa Forest Development Corporation Ltd., Jharsuguda (C) Division erstwhile Jharsuguda (T) Division with effect from the 13th April 1988 is legal and/ or justified? If not, to what relief the workman is entitled ?"

2. The workman in his statement of claim has averred that he was appointed as a Peon at Jharsuguda Timber Division of Orissa Forest Development Corporation (hereinafter referred as 'Corporation') on the 1st January 1983 and he was being paid wages as a N.M.R. but all of a sudden for no reason employment was refused to him and then he represented the management, but no fruitful result could be achieved, as a result, he had moved the District Labour Officer who initiated a conciliation proceeding which subsequently ended in failure. In Para. 8 of the statement of claim the workman has mentioned that principles of natural justice were not observed in his case and opportunity of being heard was not given to him before removing him from service. Further according to him, at the time of his removal his wages and other monetary benefits were not paid and after removing him, new appointments have been made. To sum up, it is the case of the workman that he was removed from service without observance of the formalities available in the Industrial Disputes Act and model standing order and hence he may be reinstated in service with full back wages and other service benefits.

3. The Corporation has contested the above claim by stating that the workman w.e.f. the 13th April 1988 abandoned his service and he did not join his duty, as a result, the reference is misconceived and bad in law. It is further case of the Corporation that to fulfil the prescribed work within a stipulated period the management normally engages some daily labourers with the clear understanding that their employment is seasonal in nature and after completion of the work, the employees employed for that Project would be terminated. In Para. 7 of the written statement the Corporation has further averred that the workman was engaged on daily wage basis to work in the Coupe and he was being paid by counting the days he was engaged in the work as per Minimum rate fixed by the Government. In the same Para. the Corporation has admitted that he was engaged on daily wage basis w.e.f. the 1st January 1983, but from the 1st January 1988 he did not turn up to his duty and from that day he had abandoned his employment. In Para. 8 of the written statement, the implication of the workman in a Criminal case is mentioned and according to the management, the workman did not turn up thereafter. The Corporation has also given importance to the application filed by the workman on dated the 5th August 1999 wherein he had requested for an experience certificate and in the body of the said application, the workman has clearly mentioned that he was engaged from the 1st January 1983 to the 28th April 1988 which is congenial to conclude that he had left the employment of his own desire. It is also the case of the management that the business transaction of the Corporation has reduced considerably and now it is not possible on its part to absorb the workman. In the body of the written statement emphasis is also given to the delay in raising this industrial dispute and further according to them at no point of time an appointment order was issued in his favour. By mentioning the above facts and circumstances the Divisional Manager of Jharsuguda Division of the Corporation has prayed for answering the reference against the workman.

4. The workman has filed a rejoinder and in it he has stated that the Criminal case filed against him ended in acquittal and the said case was initiated with a view to create grounds for terminating him from service. In the body of the rejoinder the workman has further averred that he had approached the authorities of the Corporation on many occasions, but no importance was given to it and without hearing him, employment was refused. He has further prayed that the reference may be answered in his favour.

5. By taking note of the pleadings of the parties, the following issues have been framed in this case :—

ISSUES

- (i) "Whether the refusal of employment to Shri Rajkishore Panda, ex-Peon by the management of Orissa Forest Development Corporation Ltd., Jharsuguda (C) Division erstwhile Jharsuguda (T) Division with effect from the 13th April 1988 is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?"

6. To suffice his claim the workman is examined as the only witness from his side and he has proved some documents which are marked as Ext. A to L. I will deal with the documents filed by him as and when required.

The management side has relied on the evidence of B. R. Nayak who is now working as the L. D. Assistant in the Establishment Section of the office of the Divisional Manager, Orissa Forest Development Corporation, Jharsuguda and he (M. W. 1) has also proved another document which is a letter written by the workman on dated the 5th August 1999. The said document is marked as Ext. 1 from the side of the Management.

FINDINGS

7. *Issue Nos. (i) and (ii)*— It is the specific case of the workman that the officers of the management have refused employment to him, but according to the management, the workman did not turn up to his duty and he has voluntarily left the same. It is the admitted case of the parties that the workman was attached to the management as an employee. The workman has claimed that he was working as a temporary Peon, but according to the management he was as a N.M.R. The management side has admitted that he was working as a N.M.R. on daily wage basis from the 1st January 1983 to the 31st March 1988 and he was receiving minimum wages fixed by the Government. In his evidence, the management witness has also stated that he had not attended his duty from the 1st April 1988. The workman has denied the same and has pleaded that employment was refused to him when he was entangled in a Criminal case. The management witness further admitted that the management did not enquire the details and whereabouts of the workman as he was a N.M.R. So from the evidence of the witness of the parties what emerges is that the workman was working as an employee under the Corporation, but from the date referred above he is not serving under it. From the documents filed by the workman it is forthcoming that he was working as a Peon. This aspect is well forthcoming from Ext. L which is a letter of the management addressed to the Divisional Manager, Orissa Forest Development Corporation, Jharsuguda Timber Division. The management witness has admitted that Ext. L is the letter of the management. By taking note of Ext. L. A and B coupled with the document proved from the side of the management which is marked Ext. L it can be safely said that the workman was working as temporary Peon under the management. In his evidence the management witness has stated that the Corporation had not given any financial compensation to the workman. He has also stated that the financial benefits were not given to the workman. The theory of abandonment of service cannot be believed as the management side did not take any action from the date of alleged abandonment of service. The evidence of the management witness that he left the service of his own desire after being entangled in a Criminal case cannot be accepted as no follow up action was taken after it. It is the incumbent duty of the management to issue a notice to the workman intimating him the date from which it would be deemed that he had left the service of his own accord. But in the case of the workman the

same was not done. No paper publication or official communication was made. So, the management side did not perform its duty properly. Even if for the sake of argument it is accepted that he had left the service of his own accord, then what made the Corporation not to pay his financial benefits is not known to this Court. But in this case, I do not believe the plea of voluntary abandonment of service by the workman and I am convinced that it is a refusal of employment to him.

8. The management side has given importance to the fact that the workman was a N. M.R.. According to the workman he was subsequently absorbed as a Temporary Peon. Even if it is accepted that he was a casual worker, Section 25- F of I. D. Act is to be complied. The benefit of the above referred Section is also available to casual workers. Admittedly the benefits in the above referred provision are not extended to the workman. As such the termination by way of refusal of employment is not to be accepted and it is to be treated as invalid in law.

9. It is for the workman to show that he was in continuous service for not less than one year under the employer who retrenched him from service and during that period of 12 months, he has served for not less than 240 days. This aspect is not to be discussed at length as the management witness has admitted that he had worked under the management from the 1st January 1983 to the 31st January 1988. As such, the refusal of employment to the workman without complying the requirements of Section 25 - F of the I. D. Act is to be seriously viewed and it can be safely said that the retrenchment is invalid in law.

10. If the retrenchment is found to be illegal and invalid for non-compliance of mandatory requirement of Section 25 - F of the Industrial Disputes Act, it is imperative for this Court to award the relief of reinstatement with full back wages. From the evidence of the workman it is forthcoming that he remained silent for a considerable period and then moved the Labour Department for conciliation. It is also forthcoming from the papers available in the case record that the workman remained silent for a long period and then took steps for his re-employment. Admittedly in the meantime a long period has passed. The financial condition of the Corporation is bad and this aspect is available in the evidence of the management witness. The same is not challenged by the workman. So, I am of firm view to direct the management to reinstate him in service. But so far the back wages are concerned there is no need of paying it as the delay is mainly occasioned due to lackadaisical attitude of the workman. The above issue are answered accordingly. Hence the following Award :—

AWARD

The reference is answered on contest in part in favour of the workman. The refusal of employment to Shri Rajkishore Panda, ex-Peon by the management of Orissa Forest Development Corporation Ltd., Jharsuguda (C) Division erstwhile, Jharsuguda (T) Division with effect from the 13th April 1988 is held to be illegal and unjustified. The management is directed to reinstate the workman in service within two months hence his prayer for payment of back wages stands rejected.

Dictated and corrected by me.

P. K. MAHAPATRO

24-1-2007

Presiding Officer

Labour Court, Sambalpur

P. K. MAHAPATRO

24-1-2007

Presiding Officer

Labour Court, Sambalpur

By order of the Governor

N. C. RAY

Under-Secretary to Government